IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 8998 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE M.R.CALLA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

ATULBHAI BIPINBHAI PATEL

Versus

STATE OF GUJARAT

Appearance:

MR HR PRAJAPATI for Petitioner

Ms.Harsha Devani, learned A.G.P. for the respondents

CORAM : MR.JUSTICE M.R.CALLA

Date of decision: 13/10/2000

ORAL JUDGEMENT

This Special Civil Application is directed against the detention order dated 29.5.2000 passed by the Police Commissioner, Ahmedabad City whereby the petitioner was detained under the provisions of Gujarat Prevention of Anti Social Activities Act, 1985. The petitioner is detained at District Jail, Junagadh since

29.5.2000.

No reply to the petition has been filed.

The grounds enclosed with the detention order show that 5 criminal cases under Bombay Prohibition Act were registered against the petitioner during the period 23.1.98 to 17.5.2000 at Police Station, Meghaninagar; Prohibition Station, West Division; Gandhinagar Prohibition Station; Prohibition Station, North Division and Prohibition Station, East Division. The detaining authority has referred to the petitioner's bootlegging and anti social activities and found the petitioner to be a bootlegger and that his activities have become a threat to the public health. On the basis of the criminal cases under the Prohibition Act and his bootlegging and anti social activities, to which reference has been made in the grounds of detention, including bald mention that his activities have become a threat to the public health, even with reference to Kanuji S.Zala's case,reported in 1999 (2) GLH 415, it cannot be said in absence of any cogent and credible material that his activities have become a threat to public health. At the most it can be said to be a case of breach of law and order and not a case of breach of public order.

Besides the 5 criminal cases and his bootlegging and anti social activities, as mentioned in the detention order, the detaining authority has also referred to incidents dated 29.4.2000 and 2.5.2000 and the depositions made by the witnesses with regard to these incidents and alleged violent and anti social activities against the petitioner. The detaining authority invoked Sec.9(2) of the Act. It is not in dispute that the statements of these two witnesses were recorded on 26.5.2000 and 27.5.2000, the same were verified on 28.5.2000 and the detention order was passed on 29.5.2000. The learned counsel for the petitioner has placed reliance on an unreported decision of this court dated 6.10.2000 in Special Civil Application No.8546/2000 in which case it was held on the basis of the earlier decision of this court in the case of Kalidas Chandubhai Kahar v. State of Gujarat, reported in 1993(2) GLR 1659 that it was case of wrong exercise of power under Sec.9(2) of the Act. In the facts of this case also it is found that it was a case of wrong exercise of power under S.9(2) of the Act.

For the reasons, as aforesaid, the impugned detention order dated 29.5.2000 passed by the Police Commissioner, Ahmedabad City cannot be sustained in the

eye of law and the same is hereby quashed and set aside. The respondents are directed to release the petitioner Atulbhai Bipinbhai Patel forthwith from the District Jail, Junagadh where he is detained since 29.5.2000, in case he is not required to be detained in any other matter. This Special Civil Application is allowed. Rule is made absolute.

(M.R.Calla,J)